

Case: #19090

Investigator: Dena Brown

Complaint Received: May 6, 2019

Complainant: Michael Broxterman and Linda Holloway

Complaint Summary:

Per CPD: The statements below were provided to CPD's Lieutenant Matthew Hammer on the day of the incident.

On May 2, 2019, at 3:34 pm. at [REDACTED] Mansion Ave., Mr. Michael Broxterman left his residence and walked to a store. When he returned to his residence, Officer Oscar Cyranek was outside of his cruiser and asked Mr. Broxterman to confirm his name, which he did. Officer Cyranek advised Mr. Broxterman he had a warrant for his arrest for violating his probation. Mr. Broxterman tried to set his food down on a vehicle, but Officer Cyranek told him not to move. Mr. Broxterman expressed to the officer he wanted to eat his food before being handcuffed. Officer Cyranek "snatched and twisted" his arm. Mr. Broxterman spun around because his arm was hurting. Officer Cyranek said quit resisting. Mr. Broxterman replied, "he was not resisting and that the officer was just trying to hurt him." Mr. Broxterman stated he weighed 123 pounds; Officer Cyranek weighed 190 pounds. Officer Cyranek placed him in a chokehold, put his knee between his legs and stepped on his feet. Mr. Broxterman told Officer Cyranek he could not breathe. Mr. Broxterman moved again and said, "you're not choking me out!" Officer Cyranek then tried to "slam him to the ground," but Mr. Broxterman would not allow him. Officer Cyranek stepped on his feet. Mr. Broxterman did not believe he had a warrant because it had been a long time. Mr. Broxterman advised Lieutenant Hammer that his leg was scraped, and his neck hurt, but did not need medical treatment.

Ms. Linda Holloway stated while standing outside on her porch approximately 20-30 feet away, she observed Officer Cyranek exit his vehicle and ask Mr. Broxterman for his name. Mr. Broxterman gave his name. Officer Cyranek asked Mr. Broxterman if he knew he had a warrant out for his arrest. Mr. Broxterman replied he did not know. Mr. Broxterman asked if he could eat his food. Officer Cyranek "slammed" Mr. Broxterman up on a vehicle and had his arm around Mr. Broxterman's neck choking him. Mr. Broxterman asked Officer Cyranek to get off of him because he was choking him and gasping for air. Officer Cyranek would not let him go and he was struggling to breathe. Her son [Witness A] told Mr. Broxterman to calm down. Mr. Broxterman replied, "but he's choking me son, tell him to stop." Ms. Holloway asked Officer Cyranek to stop choking Mr. Broxterman. Officer Cyranek got "rough" with Mr. Broxterman "slammed" him on the vehicle again and knocked his bag out of his hand. Mr. Broxterman tried to explain that he would not be able to eat at the justice center [sic]. Officer Cyranek called for back-up and several officers arrived on scene. Mr. Broxterman was eventually handcuffed and arrested for a probation violation. Ms. Holloway alleged Officer Deon Mack who transported Mr. Broxterman called her a [expletive] and drove off.

Persons Involved:

Officer Oscar Cyranek, #P0397, M/W/45 (CPD, Involved)
Officer Deon Mack, #P0558, M/B/44 (CPD, Involved)
Officer Charles Knapp, #P0297, M/W/41 (CPD, Involved/Witness)
Officer Cian McGrath, #P0072, M/W/37 (CPD, Involved/Witness)
Michael Broxterman, M/W/56 (Citizen, Complainant, Attempted)
Linda Holloway, F/W/Unknown (Citizen, Complainant, Attempted)
Witness A, M/W/Unknown (Citizen, Witness, Attempted)

Evidence Reviewed:

CPD Records

Computer Aided Dispatch (CAD)
Form 648 Citizen complaint
Form 527 Arrest and Investigation – Felony Probation violation and Resisting Arrest
Broxterman Photos
Form 18 Non-compliant (NC)/Arrestee Report
Form 17 Body-Worn Cameras (BWC) Investigation
Form 534 Contact Card
BWCs for Officers Cyranek, Knapp, McGrath, and Mack
Internal Investigations Section (IIS) Final Report
Statements by officers and complainant's statement to CPD

Clerk of Courts

CCA confirmed that, at the time of his arrest, Mr. Broxterman had an open warrant for a probation violation; the probation violation was for Trafficking in Drugs and Burglary. Mr. Broxterman was charged with Ohio Revised Code (ORC) §2921.33A Resisting Arrest. Mr. Broxterman was convicted by plea.

Significant Clarifications:

1. CPD provided the complaint summary; CCA also reviewed the statements Mr. Broxterman, Ms. Holloway, and Mr. Holloway provided to CPD. CCA was unable to speak with Mr. Broxterman, Ms. Holloway, or Mr. Holloway to obtain their versions of the incident. CCA attempted to contact Mr. Broxterman, Ms. Holloway, and Mr. Holloway by mail without success. To date, Mr. Broxterman, Ms. Holloway, and Mr. Holloway have not contacted CCA.
2. IIS deemed Officer Cyranek's hold as a "Nelson type restraint hold." Neither the IIS report for this case nor CPD procedures appear to define what constitutes a "Nelson hold." However, the Oxford English Dictionary defines a "Nelson" as follows: "A hold in which both arms are passed under an opponent's arms from behind and the hands or wrists are *clasped on the back of the neck* (usually double nelson, full nelson); (also) a hold in which one arm is thrust under the opponent's corresponding arm and the *hand placed on the back of the opponent's neck* (usually half nelson)." See OED Online, Oxford University Press, December 2021, www.oed.com/view/Entry/125957 (emphasis added). In addition, Webster-Merriman's Dictionary defines a "half nelson" as "a wrestling hold in which one arm is thrust under the corresponding arm of an opponent and the hand placed on the *back of the opponent's neck*." See Merriam-Webster.com, Dictionary, Merriam-Webster, <https://www.merriam-webster.com/dictionary/half%20nelson> (emphasis added).
3. CPD command staff reported to CCA there is no written training materials for CPD officers related to "choke holds" as they are not permitted except in deadly force-related circumstances, but that recent CPD recruits have been taught how to defend against airway holds and carotid holds.

Authorities:

CPD Procedure § 12.554 Investigatory Stops
CPD Procedure § 12.545 Use of Force
CPD Manual of Rules and Regulations – Section One – Failure of Good Behavior

Note:

Per IIS, Officers Mack, Knapp, and McGrath received a positive Employee Supplemental Log (ESL) entry for providing assistance and calming the situation between Mr. Broxterman and Officer Cyranek.

Analysis:

Original Allegations

Allegation: Excessive Force

According to Officer Cyranek's CCA statement, prior to May 2, 2019, Officer Cyranek (M/W/45) was aware Mr. Broxterman (M/W/56) had an open felony probation violation and verified Mr. Broxterman's residence through the Hamilton County Auditor's website. On May 2, 2019, Officer Cyranek observed Mr. Broxterman outside of his residence, walking back from the store and carrying a bag and a drink. In their statements, Officer Cyranek and Mr. Broxterman acknowledged Officer Cyranek asked Mr. Broxterman to confirm his name, which he did, and then Officer Cyranek advised Mr. Broxterman he had a warrant for a probation violation. According to Officer Cyranek, he grabbed Mr. Broxterman's wrist to place him into custody and Mr. Broxterman did not comply. Officer Cyranek held onto Mr. Broxterman's arms and told him to stop resisting as he moved from the sidewalk and went between two vehicles that were parked on the street. Officer Cyranek attempted to "pin" Mr. Broxterman to the ground but, "did not want to commit and go on top of him all the way." Mr. Broxterman moved his body as Officer Cyranek attempted to handcuff him.

While Officer Cyranek was attempting to handcuff Mr. Broxterman, Officer Cyranek activated his BWC, which captured Officer Cyranek holding Mr. Broxterman against a parked vehicle. Mr. Broxterman stated, "If you don't stop putting your hands around my [expletive] neck..." BWC footage showed Officer Cyranek stood behind Mr. Broxterman with his right arm across Mr. Broxterman's chest and his left hand on the back of Mr. Broxterman's neck.

Per Officer Cyranek, Mr. Broxterman resisted the entire time, and Officer Cyranek held his taser against Mr. Broxterman's back until additional officers arrived on scene. Mr. Broxterman's alleged Officer Cyranek choked him during his arrest. Officer Cyranek denied choking Mr. Broxterman. Photographs taken at the scene of the arrest showed no injuries to Mr. Broxterman's neck.

CPD Procedure §12.545 Use of Force states when officers have a right to make an arrest, they may use whatever force is reasonably necessary to apprehend the offender or effect the arrest and no more. The procedure defines active resistance to be when a subject is making physically evasive movements to defeat the officer's attempt at control, and it lists "hard hands" as a force option for addressing an actively resistant subject. The procedure defines "hard hands" as the "use of physical pressure to force a person against an object or the ground, use of physical strength or skill that causes pain or leaves a mark, leverage displacement, joint manipulation, pain compliance, and pressure point control tactics."

Procedure §12.545 elaborates that a "choke hold" "could be considered deadly force and that such holds "are prohibited unless a situation arises where the use of deadly force is permissible." CPD policy does not define what a "choke hold" is, but CPD instructs its officers on how to defend against two different kinds of holds commonly regarded as choke holds: an airway chokehold and a carotid chokehold.

During Lieutenant Hammer's investigation, Ms. Holloway and Mr. Holloway stated they witnessed Officer Cyranek "choke" Mr. Broxterman; however, their statements did not clarify where Officer Cyranek's hands were with respect to Mr. Broxterman's neck and/or whether any pressure was applied. Since Officer Cyranek did not use his BWC to record when he first began using force, and as Mr. and Ms. Holloway did not respond to CCA's attempts to conduct an interview to follow-up on the statement they provided to CPD, CCA was unable to determine if Officer Cyranek used excessive force and a "choke hold" during Mr. Broxterman's arrest as alleged.

Allegation: Discourtesy

Ms. Holloway alleged Officer Mack called her an expletive as he transported Mr. Broxterman away from the scene. In his statement, Officer Mack stated that he did not "recall at any point even speaking with her." Per BWC footage, during the initial encounter, Officer Mack assisted in de-escalating the tension between Officer Cyranek and Mr. Broxterman. Several minutes later, Mr. Holloway stated the alleged expletive

during his interaction with Mr. Broxterman and Officer Mack, shouting “B***h.” Officer Mack responded, “Yo momma!” Officer Mack’s response to Mr. Holloway was unprofessional and inappropriate. CPD’s Manual of Rules and Regulations §1.06 states members shall always be civil, orderly, and courteous in dealing with the public, subordinates, superiors and associates, and avoid the use of coarse, violent, or profane language. Officer Mack’s comment was not in compliance with CPD’s policy, procedure, and training.

Collateral Allegation

Allegation: Improper Procedure (BWC)

CPD Procedure §12.540 Body Worn Camera System denotes officers are required to activate their BWC system on any call for service or self-initiated activity during all law enforcement-related encounters and activities. During Officer Cyranek’s initial interaction with Mr. Broxterman, he failed to activate his BWC; he activated his BWC after he placed his right hand behind Mr. Broxterman’s neck. As the policy requires officers to activate their BWC for self-initiated activity, CCA concluded Officer Cyranek did not comply with CPD’s policy, procedure, and training.

Recommendation:

Recommendation #R2136

Use of Force Policy/Procedure

CCA recommends CPD revise its use of force policies to clarify what qualifies as a “choke hold” under its Procedure Manual, including by stating what kinds of neck restraints or neck holds qualify as choke holds or are otherwise prohibited. CCA recommends that such a revision incorporate standardized language such as from the National Consensus Policy on Use of Force or another comparable source providing national best practices.

In CPD Procedure §12.545 Use of Force, the definition section provides the following with respect to choke holds: “The courts could consider a choke hold or other similar type of holds as deadly force. Choke holds are prohibited unless a situation arises where the use of deadly force is permissible under exhibiting law and Department policy.” However, the section does not define with specificity what a “choke hold” or “similar type of hold” would be. Neither does the policy say, on its face, whether other neck holds or neck restraints that CPD does not consider to be “choke holds” are permitted.

In this case, due in part to a lack of adequate BWC evidence, credible witness accounts, or other evidence, CCA was unable to clearly determine the type of neck hold that an officer used to restrain an arrestee. At a minimum, however, the available BWC footage revealed that the officer placed one of his arms across the chest of the arrestee from behind and anchored his hand from the other arm to the back of the arrestee’s neck in what IIS described as a “Nelson type restraint hold.” Even assuming that the description of that hold as a “Nelson type restraint hold,” is accurate (a conclusion CCA does not necessarily share), it is not clear whether the choke hold ban in CPD’s Procedure Manual would have prohibited or permitted a Nelson hold, since the Procedure Manual appears to prohibit holds that are “similar” to choke holds, without clarifying what holds fall under that definition. The policy would benefit from an update to clarify the restraints that are banned.

Findings:

Original Allegations

Michael Broxterman

Officer Oscar Cyranek

Excessive Force – There are insufficient facts to decide whether the alleged misconduct occurred. **NOT SUSTAINED**

Linda Holloway

Officer Deon Mack

Discourtesy - The allegation is supported by sufficient evidence to determine that the incident occurred, and the actions of the officer were improper. **SUSTAINED**

Collateral Allegations


Officer Oscar Cyranek

Improper Procedure (BWC) – The allegation is supported by sufficient evidence to determine that the incident occurred, and the actions of the officer were improper. **SUSTAINED**



Dena Brown, Division Manager (Chief Investigator)

12/29/2021
Date



Gabriel Davis, Director

12/29/2021
Date

Previous Contacts and Commendations:

Officer Cyranek

Previous Contacts with CCA

Officer Cyranek had four previous contacts with CCA in the past three years.

Case Number	Allegation	Finding
17051	Stop (vehicle)	Exonerated
17051	Search (vehicle)	Exonerated
18142	Harassment	Unfounded
18142	Stop (Person)	Exonerated
18216	Harassment	Referred
19055	Entry (Residence)	Not Sustained
19055	Discourtesy	Unfounded
19055	Stop (Vehicle)	Exonerated
19055	Procedure (Completing Citation)	Sustained

Previous Contacts with IIS

CCA is unaware of any additional previous contact by Officer Cyranek with IIS.

Commendations

Officer Cyranek received six commendations in the past three years.

Date	Source of Commendation Received
04/02/2017	CPD
04/02/2017	CPD
12/28/2017	CPD
08/09/2018	CPD
09/06/2018	CPD
09/06/2018	CPD

Officer Mack

Previous Contacts with CCA

Officer Mack had eight previous contacts with CCA in the past three years.

Case Number	Allegation	Finding
18002	Search (Residence)	Exonerated
18002	Entry (Residence)	Exonerated
18036	Procedure Violation	Info Filed (per CPD)
18115	Stop (Vehicle)	Exonerated
18115	Harassment	Not Sustained
18115	Pointing of a Firearm	Exonerated
18115	Discourtesy (Profanity)	Sustained
18133	Unethical Conduct	
18185	Procedure Violation (Consent to Search Form)	Sustained
18185	Procedure (BWC - Turned Off Early)	Sustained
18185	Improper Search (Residence)	Not Sustained
18185	Search (Vehicle)	Exonerated

Case Number	Allegation	Finding
18211	Pointing of a Firearm	Exonerated
18217	Improper Procedure (Consent to Search)	Sustained
19076	Improper Search	Sustained
19076	Discourtesy	Sustained

Previous Contacts with IIS

CCA is unaware of any additional previous contact by Officer Mack with IIS.

Commendations

Officer Mack received no commendations in the past three years.